

Members

Rep. Kathy Richardson, Chairperson
Rep. Ralph Ayres
Rep. Ryan Dvorak
Rep. Robert Kuzman
Sen. Richard Bray, Vice-Chairperson
Sen. David Long
Sen. John Broden
Sen. Timothy Lanane
G. Michael Witte
David A. Lewis
Chief Justice Randall Shepard
Ron Tabaczynski
Jacqueline Rowan



COMMISSION ON COURTS

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Authority: IC 33-1-15

MEETING MINUTES¹

Meeting Date: August 23, 2005
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Kathy Richardson, Chairperson; Rep. Ralph Ayres; Rep. Ryan Dvorak; Rep. Robert Kuzman; Sen. Richard Bray, Vice-Chairperson; Sen. Timothy Lanane; G. Michael Witte; Chief Justice Randall Shepard; Ron Tabaczynski.

Members Absent: Sen. David Long; Sen. John Broden; Jacqueline Rowan.

Rep. Richardson called the first meeting of the Commission on Courts to order at 1:45 p.m.

Rep. Richardson referred to a memo (see Attachment A) that included the Commission's statutory charge, the members on the Commission, its budget, and the Legislative Council's rules which govern how the Commission should operate.

Frank Sullivan, Justice, Indiana Supreme Court, and Mary DePrez, Director, Judicial Technology and Automation Committee (JTAC)

Rep. Richardson recognized Justice Frank Sullivan to update the Commission on the activities of the Judicial Technology and Automation Project. Justice Sullivan's prepared remarks are included in Attachment B.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

In the discussion with committee members following his presentation, Justice Sullivan indicated that local courts will be asked to pay for computer hardware and technology staff while JTAC would provide case management software. Justice Sullivan noted that most courts already have both the necessary equipment and staff. JTAC's assumption of software costs would eliminate counties' licensing fee expenditures. Counties wishing to convert old data to the new system would incur the cost of this conversion.

Rep. Kuzman discussed his concerns about delays by the Bureau of Motor Vehicles (BMV) in reinstating suspended licenses. Mary DePrez, director of the Case Management System project for the Indiana Supreme Court, responded that the method for sending court orders involving traffic cases to the Bureau of Motor Vehicles is being improved through a federal grant from the Motor Carrier Safety Administration. Currently, the courts send paper copies of the SR-16 forms (see Attachment C) to the Bureau of Motor Vehicles, where they are manually entered by clerical staff. This results in significant delays between when the court order is issued and when the order is finally in the BMV system. A new federal mandate requires serious traffic convictions of persons holding Commercial Drivers Licenses to be sent to the BMV within 10 days of the conviction. If Indiana does not comply, the state could lose more than \$30 million in federal highway funds. The federal Motor Carrier Safety Administration has awarded a \$1 million grant to JTAC to help courts and clerks install systems to allow electronic transfer of the court actions of all traffic cases to the state BMV. She noted that this new system should reduce many of the delays in the current system.

Rep. Kuzman commented on another delay in the current system. He indicated that some clerks hold court orders to reinstate licenses until defendants pay any unpaid fees. Consequently, Rep. Kuzman indicated that this federal grant will help JTAC deal with the first problem of getting the information entered quickly (for both commercial and regular driver's licenses) but it will not necessarily address his concern with the clerks holding up the court abstract.

Justice Sullivan also made the following points:

- City and town courts and small claims courts will be allowed to be in the JTAC system.
- The county savings on software licensing fees vary widely from one county to next.
- Instead of setting standards for the local courts to follow, JTAC decided to establish a statewide case management system because standards for computers rapidly become obsolete.
- Substantial progress is being made in developing jury pool lists from the merged files of the Bureau of Motor Vehicles and the Department of Revenue.
- As many as 12 counties will be ready to participate in the pilot program beginning in 2007.

Summary of 2005 General Assembly Activities

Mark Goodpaster presented a summary of the recommendations that were made during the 2005 interim by the Commission on Courts and the bills that were enacted during the 2005 General Assembly. (Attachment D).

Testimony of Fred Pfenninger concerning HEA 1113-2005

Fred Pfenninger, a collection attorney, told the Commission members about the difficulties he is experiencing with civil action fees due to passage of HEA 1113–2005. He told the Commission members that collection attorneys face an issue because HEA 1113–2005 requires county clerks to charge \$10 for each defendant named or added in a case. Mr. Pfenninger raised the following questions. First, it is not clear whether garnishees² are technically defendants in civil and small claims cases. Second, should the party naming a garnishee in a civil or small claims action be required to pay a \$10 fee for each garnishee.

Mr. Pfenninger told the Commission members that this new fee is a problem for collection attorneys for at least two reasons. First, the fee is being inconsistently applied between counties and he would like more clarification in the form of legislation and from the Attorney General. He indicated that he did not think that the fee should apply to the garnishees. Second, Mr. Pfenninger stated that collection attorneys may be sued under the Fair Debt Collection Practices Act if the proper fee is not included in the court order.

During Commission discussion, the members disagreed about the intentions of HEA 1113's application in garnishments. Rep. Richardson stated that she had not intended that garnishees should be liable for additional fees and would seek an opinion from the Attorney General. Rep. Kuzman stated that he intended for the civil action fee to be paid if the party named as a garnishee is considered to be a defendant. Rep. Kuzman also commented that the party filing the action should pay the fee because the party is using the court system.

Testimony of Bob Spears, Marion County Small Claims Court, Perry Township, Concerning HEA 1113

Judge Spears told the Commission members that when HEA 1113 created the Judicial Salaries Fee, it permitted the state General Fund to receive 75% of the fee but was silent about where the 25% should be deposited. While the other township court judges assume that this 25% should remain at the township level, Judge Spears requested clarification. Rep. Richardson indicated that the Commission will request a bill draft to address this question and will draft a letter to the Office of the Attorney General to interpret the language about how the 25% balance of the fee revenue should be administered.

Other Issues and Topics

Rep. Kuzman indicated that a Lake County superior court recently ruled that an arrested person can not use a credit card to post bond. This court decision could significantly affect county jails because persons arrested for vehicular violations would either have to stay in jail and await trial or rely on bail bond agents to secure pretrial release.

Chief Shepard told the Commission members that he would like to discuss the manpower needs of the Indiana Court of Appeals at a future meeting.

Rep. Richardson indicated that representatives of Marion County's superior courts would like to discuss the county's need for additional staff paid staff.

Rep. Dvorak discussed the issue of judicial mandates for salary increases for court employees.

² Note: A "garnishee" is a person or entity, quite often a bank or employer, which receives a court order not to release funds held for or owed to a customer or employee, pending further order of the court. (Source: Law.com)

Rep. Richardson told the Commission members that a meeting date would be announced as soon as possible.

Rep. Richardson adjourned the meeting.